the defendant in selling its product. It contemplated that plaintiff should sell goods for defendant, but was not itself a contract of sale. Federal regulation of commerce has been recognized as controlling the persons and property engaged in interstate transportation, the things transported, and the senders and recipients of things transported. Contracts of sale, whose direct effect is to require transportation of something, have been held to be within the control of Congress. *Robbins* v. *Shelby County, etc.*, 120 U. S. 489. But further than this courts have been loath to go, and could not logically go. Transportation is essential to commerce. *Railway Co.*, v. *Husen*, 95 U. S. 465; *County of Mobile*, v. *Kimball*, 102 U. S. 691; *Hammer* v. *Dagenhart*, U. S. Sup. Ct., June 1918. Mere manufacturing or producing, though it may result in interstate transportation, is not commerce. *United States* v. *Knight Co.*, 156 U. S. 1; *Del. L. & W. Ry.* v. *Yurkonis*, 238 U. S. 439. A contract by a person in one state to labor in another is not commerce, though it will result in commerce, *Williams* v. *Fears*, 179 U. S. 270; nor to do other acts in another state, *Pac. Adv. Co.*, v. *Conrad*, 168 Cal. 91; nor is making a contract of insurance interstate commerce, although the principals live in different states, *Paul* v. *Virginia*, 8 Wall. 168; *Hooper* v. *California*, 155 U. S. 648; *N. Y. Life Ins. Co.*, v *Craven*, 178 U. S. 389. The court in the principal case seems to have ignored the difference between a contract of agency to sell and a contract of sale.

CONTRACTS—"MUTUALITY"—COUNTER PROMISE IMPLIED.—Plaintiff wrote to defendant, "We will undertake the sale of your wheels . . . . upon the following terms and conditions: Commissions.—On all orders received, accepted and shipped by your company you will pay us 3% of the net sales price." This proposal was indorsed, "accepted," by the defendant. It was by its terms to continue for five years. Before the expiration of that time defendant repudiated the agreement and plaintiff sued for damages resulting from loss of future gains. *Held*, plaintiff could recover. *American Distributing Co.*, v. *Hayes Wheel Co.*, (March, 1918), 250 Fed. 109.

The issue made was whether the contract was "void for lack of mutuality." It was held that by the expression, "we will undertake the sale of your wheels," read in connection with the phrase, "orders taken by us shall be submitted for your acceptance, the plaintiff impliedly promised to use good faith and diligence in obtaining orders, and that there was therefore mutuality of obligation. See, in analogy, *Novakovich* v. *Union Trust Co.*, 89 Ark. 412; *Gilmore & Co.*, v. *Samuels & Co.*, 135 Ky. 706. No question was raised as to whether there was any promise on the defendant's part, as consideration for the plaintiff's implied promise. Yet this would seem the more doubtful point. Defendant promised nothing except to pay 3% commissions on "orders received, accepted and shipped" by it. There was no promise whatever that it would accept and ship orders received, unless it could be implied. In *Goodyear* v. *Koehler etc. Co.*, 143 N. Y. S. 1046, a very similar contract expressly provided that the defendant should not be liable for refusal or neglect to furnish the goods as ordered, and the court held that there was no mutuality of obligation. A dissenting opinion urged that there was an implied promise

to furnish the goods as ordered. An almost identical contract was upheld in *Gile* v. *Inter-State Motor Car Co.*, 27 N. D. 108, only on the ground that it had been adhered to by both parties during its stipulated term, and had therefore become enforcible as a unilateral contract, whether or not it had been enforcible in its inception. See 12 MICH. L. REV. 667. The necessary promise was implied in *Chi. R. I. & G. Ry.*, v. *Martin*, (Tex.), 163 S. W. 313, discussed in 12 MICH L. REV. 694.

CRIMINAL LAW—ESPIONAGE ACT—RED CROSS AND Y. M. C. A. AS PART OF "MILITARY OR NAVAL FORCES."—The Espionage Act (40 Stat. 219, C. 30) provides that "whoever, when the United States is at war, (1) shall wilfully make or convey false reports or false statements with intent to interfere with the operation or success of its enemies," etc., shall be guilty of an offense. Defendant was indicted for having said to numerous people while a "drive" was on to raise funds for the war work of the Red Cross and Y. M. C. A., "I am through contributing to your private grafts. There is too much graft in these subscriptions. No; I do not believe in the work of the Y. M. C. A. or the Red Cross, for I think they are nothing but a bunch of grafters. No, sir, I can prove it. I won't give you a cent. The Y. M. C. A., the Y. W. C. A., and the Red Cross is a bunch of grafters. Not over 10 or 15 per cent of the money collected goes to the soldiers or is used for the purpose for which it is collected. Who is the government? Who is running this war? A bunch of capitalists composed of the steel trust and munitions makers." On motion to squash, *held* that the indictment stated an offense under the Act. *United States* v. *Nagler*, (D. C. W. D. Wis., 1918), 252 Fed. 217.

It is not by any means every utterance, however disloyal the speaker may thereby be indicated to be, that is covered by the Espionage Act, the Act covers only utterances affecting the military or naval forces. *United States* v. *Schutte*, 252 Fed. 212. A strict application of the general rule that criminal statutes are to be strictly construed might conceivably lead to a conclusion opposite to the one reached in the principal case. The court felt warranted in upholding the indictment because of the relationship of the Red Cross and Y. M. C. A. organizations with the forces in the field, created and recognized by the President and the constituted authorities. The fact that the Red Cross is recognized by international treaties and its members are by the Treaty of Geneva of August 12, 1864, to be treated as neutrals when captured were deemed not to interfere with treating the organization as part of the military and naval forces of the United States. No doubt it will be a source of great satisfaction to most people that the circulation of such vicious lies as were repeated by the defendant in the principal case can be reached by criminal proceedings.

CRIMINAL LAW—POWER OF PROSECUTING ATTORNEY TO ENTER A NOLLE PROSEQUI.—Respondent was judge of the Municipal Court of Chicago, and had about 400 cases for violation of the Sunday liquor law pending in his court, when the relator, the State's attorney of Cook County, proposed to enter a *nolle prosequi* in every one of the cases. The judge refused to allow this to be done, and the instant case was selected as a test case, the State's attorney